IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.10830 of 2007

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANGABHAI MOHANBHAI & 2 - Petitioner(s)
Versus
GENERAL MANAGER (LANDS) & 1 - Respondent(s)

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Appearance :
MR GM AMIN for Petitioner(s) : 1 - 3, 3.2.1,3.2.2
MR JASWANT K.SHAH, AGP for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 22/06/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Rule. Mr.J.K.Shah, learned Assistant Government Pleader waives service of notice on behalf of the respondents. Having regard to the facts of the case, the petition is taken up for disposal today.

2. By filing the instant petition under Article 226 of the Constitution, the petitioners have prayed to issue an appropriate Writ or order directing the respondents to hand over possession of land admeasuring 0 Hectare, 70 Are and 94 sq.mt. of Survey No.218 Paiki as well as land admeasuring 304 sq.mt. of Survey No.216/2 Paiki, situated in the Sim of village Dhandhuka, Taluka: Dhandhuka, District: Ahmedabad, to them immediately. In the alternative, the petitioners have prayed to direct the respondents to initiate proceedings for acquiring the above-mentioned lands and declare award as well as pay the balance amount of compensation to them with running interest at the rate of 18% p.a.

3. The petitioners are the owners of land admeasuring 0 Hectare, 70 Are and 94 sq.mt. of Survey No.218 Paiki as well as land admeasuring 304 sq.mt. of Survey No.216/2 Paiki, situated in the Sim of village Dhandhuka, Taluka: Dhandhuka, District: Ahmedabad. A proposal was sent by the Executive Engineer, Surendranagar, to acquire the lands of the petitioners for the public purposes of, (1) construction of observatory station, (2) construction or Rest House in Narmada Vasahat, (3) construction of workshop and garage to maintain vehicles needed for the purpose of maintaining Vallabhipur – Botad branch canal and (4) construction of offices/ residential units for employees. The respondents made a proposal to the petitioners to hand over possession of the lands needed for the abovereferred to purposes and promised them to make payment of advance compensation. Placing implicit reliance on the promise made by the

respondents, the petitioners handed over possession of the part of Survey No.218 on January 15, 1991 and of Survey No.216/2 on January 25, 1991. As assured, the petitioners were paid advance amount of compensation of Rs.2,30,679/- on July 6, 1991. However, thereafter, the respondents did not initiate any proceedings to acquire the lands of the petitioners. The petitioners therefore, along with the forwarding letter dated July 12, 2006, sent back the drafts for the amount received by them as advance compensation and demanded that possession of the lands be restored to them. However, the said drafts were sent back to the petitioners as correspondence relating to the lands in question was going on between different Departments. On December 8, 2006, the General Manager (Land) Sardar Sarovar Narmada Nigam Limited, wrote a letter to the Executive Engineer, Dhandhuka, that the lands in question were not needed for the public purposes mentioned

earlier and therefore, possession of the lands should be handed over to the petitioners. The grievance made by the petitioners in the instant petition is that in spite of the said letter, possession of the lands is not handed over to them. Under the circumstances, the petitioners have filed the instant petition and claimed the reliefs to which reference is made earlier.

4. The petition was placed for preliminary hearing before the Court on April 25, 2007, and after hearing the learned counsel for the petitioners, notice was issued. On behalf of the respondents, Mr.J.K.Shah, learned Assistant Government Pleader, appears.

5. This Court has heard Mr.G.M.Amin, learned counsel for the petitioners and Mr.J.K.Shah, learned Assistant Government Pleader for the respondents.

6. During the course of hearing of the petition, Mr.J.K.Shah, learned Assistant Government Pleader, on instructions of Mr.N.A.Timania, Deputy Executive Engineer, S.B.C. Division No.2/3, Dhandhuka Unit-E, and Mr.P.J.Desai, A.A.E., S.B.C., Division No.2/3, Dhandhuka Unit-E, who are personally present in the Court, has produced a xerox copy of letter dated June 21, 2007, addressed by Mr.B.N.Rathod, Superintending Engineer, Saurashtra Branch Canal Division No.2/3, Dhandhuka, for perusal of the Court. It is ordered to be taken on record of the petition. From the contents of the said letter, it is evident that now the lands of the petitioners are not needed for the public purposes mentioned earlier. In the said letter, it is stated that as the petitioners have agreed to take back possession of the lands without payment of compensation, possession of the lands should be given back to them. As the respondents have shown their willingness to hand over

possession of the lands in question to the petitioners and the petitioners have shown their willingness to take back the possession of the lands without insisting for payment of compensation, this Court is of the opinion that interest of justice would be served if the petition is disposed of by giving the following directions.

7. For the foregoing reasons, the petition partly succeeds. The respondent No.2, i.e. the Executive Engineer, Saurashtra Branch Sub Division No.2/3, Narmada Vasahat, Dhandhuka, District: Ahmedabad, is hereby directed to hand over peaceful and vacant possession of the land admeasuring 8094 sq.mt. of Survey No.218 Paiki and land admeasuring 304 sq.mt. of Survey No.216/2 Paiki, situated in the Sim of village Dhandhuka, Taluka: Dhandhuka, District: Ahmedabad, to the petitioners as early as possible and latest by July 22, 2007. The draft for the amount which was received by

the petitioners as advance payment of compensation shall be sent by the petitioners to the respondent No.2 which shall be accepted by the respondent No.2.

8. Rule is made absolute subject to the abovereferred to directions. There shall be no orders as to costs.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

(sunil)